Supreme Court, U.S.
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(2)

No. 99-2012

IN THE

Supreme Court of the United States

A.M. CAPEN'S CO., INC.,

Petitioner,

v.

AMERICAN TRADING AND PRODUCTION CORPORATION, BLAS ROSSY-ASENCIO and RAFAELA FULANA DE TAL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

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29 pp

STATEMENT PURSUANT TO RULE 29.6

Respondent, American Trading and Production Corporation, has no parent corporation and no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

Page

Statement Pursuant to Rule 29.6 i

Table of Contents ii

Table of Cited Authorities iii

Reasons for Denying the Writ 1

Factual Background 1

I. Neither The Record Nor The Decision Of The First Circuit Court Of Appeals Raise The Question Presented For Review 2

II. The First Circuit Ruling Does Not Conflict With Either Puerto Rico Dealers' Act Nor Puerto Rico Supreme Court Precedent 6

III. This Case Does Not Have Far-reaching Implications In The Federal Judiciary And The Commonwealth Relations, It Is Simply An Opinion Of Statutory Construction 11

Conclusion 21

TABLE OF CITED AUTHORITIES

Page

Cases:

A. M. Capen's Co, Inc. v. American Trading and Production Corporation, 74 F.3d 317 (1st Cir. 1996) 7

Blair v. Oesterlein Co., 275 U.S. 220 (1927) 5

Cruz Ramos v. Brother Int'l Corp., 445 F. Supp. 983 (D.P.R. 1978), *aff'd mem. sub nom.*, 588 F.2d 817 (1st Cir. 1978) 9, 10

Draft Line Corp. v. The Hon Co., 781 F. Supp. 841 (1981) 21

Ebi, Inc. v. Gator Industries, Inc., 807 F.2d 1 (1st Cir. 1986) 9

Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938) ... 11, 12

Fornaris v. Ridge Tool, 423 F.2d 563 (1st Cir. 1970) 6

Fornaris v. Ridge Tool Co., 400 U.S. 41 (1970) .. 8, 14

Frisey v. Schultz, 487 U.S. 474 (1988) 14

Gloria Blimzer v. Marriot International, Inc., 81 F.2d 1148 (Cir. 1 1996) 12

Cited Authorities

	Page
González v. Brown Group, Inc., 628 F. Supp. 436 (D.P.R. 1985)	9
Haring v. Prosise, 462 U.S. 306 (1983)	14
Heckler v. Campbell, 461 U.S. 458 (1982)	3
Holloway v. United States, 526 U.S. 1 (1999)	11
J. Soler Motors v. Kaiser Jeep Int'l, 108 D.P.R. 134 (1978)	17
Lugo v. Matthew Bender & Co., Inc., 579 F. Supp. 638 (D.P.R. 1984)	10
Mario R. Franceschini, Inc. v. Riley Co., 591 F. Supp. 414 (D.P.R. 1984)	9
Miree v. Dekalb Country, 433 U.S. 25 (1977)	4
Moore v. Illinois, 408 U.S. 786 (1972)	5
Morales v. Gregg Shirt Makers, Inc., 682 F. Supp. 142 (D.P.R. 1988)	10
New Orleans v. Dukes, 427 U.S. 297 (1976)	4
Representaciones Ebi, Inc. v. Gator Industries, Inc., 629 F. Supp. 662 (D.P.R. 1986), *aff"d sub. nom. Ebi, Inc. v. Gator Industries, Inc.*, 807 F.2d 1 (Cir. 1 1986)	9

Cited Authorities

	Page
San Juan Mercantile Corp. v. Canadian Transport Co. Ltd., 108 P.R.R. 211 (1978)	8, 20
Soler Motors, Inc. v. Kaiser Jeep Int'l Corp., 108 P.R.R. 134 (1978)	8
Stanley v. Illinois, 405 U.S. 645 (1972)	5
Sudouest Import Sales Corp. v. Union Carbide Corp., 569 F. Supp. 1547 (D.P.R. 1983)	9
Sudouest Import Sales Corp. v. Union Carbide Corp., 732 F.2d 14 (Cir. 1 1984), *aff'd*, 569 F. Supp. 1547 (D.P.R. 1983)	9
Tacon v. Arizona, 410 U.S. 351 (1973)	5
Triangle Trading Co. v. Robroy Industries, Inc., slip op. at 2 (1st Cir., Dec. 29, 1999)	10
University of California Regents v. Bakke, 438 U.S. 265 (1978)	5
Warner Lambert v. Tribunal Superior, 101 P.R.R. 378 (1973)	8
Weinberger v. Rossi, 456 U.S. 25 (1981)	13

Cited Authorities

Page

Statutes:

Mo. Rev. Stat. § 400(1) (1974 and Supp. 1975) ... 6

Mo. Rev. Stat. § 405 (1974 and Supp. 1975) 6

Mo. Rev. Stat. § 407 (1974 and Supp. 1975) 6

Mo. Rev. Stat. § 410 (1974 and Supp. 1975) 6

N.J. Rev. Stat. § 56:10-4 (1971) 6

N.J. Rev. Stat. § 56:10-5 (1971) 6

United States Constitution:

Article 1, § 8, clause 3 3

Other Authorities:

Antonetti, *Puerto Rico Dealers Act Fourteen Years Later*, 83 Com. L. J. 453 1978 7

18 Diario de Sesiones, Comisión de Industria y Comercio, May, 14, 1964 .....16, 18, 19

Lawrence Tribe, *American Constitutional Law*, 2d Edition, 1988 5

Cited Authorities

Page

Mario Rodriguez-Vidal, *The conceptual just cause for the Lawful Termination of a Dealership Under the Dealers Contract Law of Puerto Rico*, 58 Rev. — Jur. UPR 261 (1989) 10

Salomone, *Puerto Rico's Distributors' Law: Law 75, A Primer*, 18 Rev. Jur. 67 (1983) 7

REASONS FOR DENYING THE WRIT

The sole question presented for review by the Petition, albeit segmented in three issues by Capen's, is one of statutory interpretation. That is, whether Puerto Rico Dealers Act of 1964 (Act 75) express language and purpose in its definition of a "dealer" under the law, only applies to a distributor that has its place of business in Puerto Rico. Petitioner argues that the First Circuit Court of Appeal's opinion improperly holds that it does. However, the First Circuit Court's decision, Honorable Judge Torruellas Presiding, and whose rehearing *en banc* was denied, is not in conflict with Act 75's plain language and legislative history, nor Puerto Rico Supreme Court's holdings. Petitioner has made a "federal case" out of what is, and always should have been, nothing more then a contract dispute between two continental United States' corporations, Petitioner with its sole and principal place of business in New Jersey, and Respondent with its principal place of business in Missouri. The First Circuit's ruling is proper in all respects and Respondents respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari.

FACTUAL BACKGROUND

The exception Respondents take to Petitioner's statement of facts is its averment that Capen's was not required to have any kind of physical presence in Puerto Rico in order to engage as a dealer in Puerto Rico. This is a misstatement since it gives the impression that Respondent American Trading did not require it or had some kind of opinion to give on the business' site options. Capen's is a New Jersey corporation with its principal place of business in New Jersey. Said state is also the sole site where Petitioner has

an office, a business place and a warehouse. American Trading is an entity with principal place of business in Missouri. Capen's made a giant leap, in its effort to do some legal remedies shopping, and filed in the Federal Court for the District of Puerto Rico two separate diversity actions against Respondents. Both cases were consolidated at the district and court of appeals level.[1] The First Circuit Court of Appeals made a clear and specific statement of facts, to which Respondents adhere. Petitioner's App. 1.

I.

NEITHER THE RECORD NOR THE DECISION OF THE FIRST CIRCUIT COURT OF APPEALS RAISE THE QUESTION PRESENTED FOR REVIEW

While, as Respondents will show, Petitioner's claims are not a fair reading of Judge Torruellas' First Circuit panel opinion and order, it must be first stated that the arguments of Certification to the Puerto Rico Supreme Court, and the constitutional claims against the Dealers' Act, were never brought to the attention of the First Circuit Court nor were they part of its ruling.

Where the ground presented has not been raised below, this court has decline to decide arguments not raised

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1. The case against Respondents Mr. and Mrs. Blas Rossy, was based on Petitioner's claim of contractual interference. Said action was legally dependent on the main litigation against American Trading. Having no remedies under Act 75, Respondent American Trading could terminate or modify at will the agreement with Capen's, thereby the Rossy's liability was terminated pursuant the First Circuit's opinion, and Petitioner has not raised this issue as a question in its Petition.

by Petitioner in the Court of Appeals. *Heckler v. Campbell*, 461 U.S. 458, 468-469 n.12. While this Court is

> . . . largely dependent upon the assertions made by the parties as to what that record will demonstrate concerning the manner in which a federal question was raised below; *Webb v. Webb*, 451 U.S. 493, 494 (1980), this Honorable Court may note that nowhere in the First Circuit Court's opinion is any federal question mentioned. App. 1. Also, in Petitioner's enumeration of error on its cross appeal the sole error argued on its claim was that the Puerto Rico District Court made an erroneous interpretation of Act 75's damage formula as applied to a contractual impairment case versus a termination claim. As admitted by Petitioner . . . A.M. Capen's filed a cross-appeal in disagreement with the sum awarded". Petitioner's brief at page 10.

Petitioner, as a matter of law, alleged only diversity of citizenship as the basis for its filing of the lawsuit in the United States District Court for the District of Puerto Rico. Capen's did not rely on federal question jurisdiction. Capen's complaint seeked recovery under Puerto Rico Dealers Act of 1964, on the grounds of breach or contract. There is not a single indication that Petitioner alleged a violation of Puerto Rico Dealers Act of the Federal Constitution nor any remedy upon such claim. Thereby, petitioner's timid reference to Article 1, § 8, clause 3 of the Constitution of the United States in its Petition has no relevance to the controversy decided by Honorable Judge Torruellas' First Circuit Court of Appeals' panel. In its Petition Capen's argues that the First Circuit ruling will have a ". . . discriminating [effect]

against interstate commerce", brief at page 18; that ". . . there has been no showing that change in the statute's coverage cannot be promoted by alternative means that do not burden interstate commerce"; and that "[t]he First Circuit did not address this issue and therefore its decision is thus open to a constitutional attack". *Ibid.* at 18. This Supreme Court, should not give any consideration to this constitutional claim brought by Capen's for the first time in this litigation, since ". . . it was neither pleaded, argued nor briefed either in the District Court or in the Court of Appeals . . . *Cf. Lawn v. United States*, 355 U.S. 339, 362-363 n.16 (1958)", *Miree v. Dekalb Country*, 433 U.S. 25, 34 (1977)[2].

Respondents sustain that the questions presented by Petitioner are not properly before this Honorable Court. It was not raised by Capen's on the record before the district

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2. This Supreme Court has held, when reviewing equal protection challenges, such as Capen's has made for the first time in its request for Certiorari, to local economic regulations of the Puerto Rico Dealers Act, that:

> When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. See, *e.g., Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973). Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest.

New Orleans v. Dukes, 427 U.S. 297, 303 (1976).

court nor at the First Circuit Court. This is only an ordinary case and "[i]t is only in exceptional cases, and then only in cases from the federal courts, that questions not pressed or passed upon below are considered here. *Dwingan v. United States*, 274 U.S. 195". *Blair v. Oesterlein Co.*, 275 U.S. 220, 225 (1927). There is no reason to deviated from this rule now. *Tacon v. Arizona*, 410 U.S. 351, 352 (1973); *Moore v. Illinois*, 408 U.S. 786, 799 (1972); *Stanley v. Illinois*, 405 U.S. 645, 658 n.10 (1972); and *University of California Regents v. Bakke*, 438 U.S. 265, 283 (1978) all cases decided in the context of federal constitutional issues on review of state court decisions.

On the basis of equal protection and economic regulation,

> . . . it is significant that the [Supreme] Court never wholly abandoned the position that legislatures, at least in their regulatory capacity, must always act in furtherance of public goals transcending the shifting summation of private interest through the political process. The pluralist thesis that there exist no public interest beyond that summation (note omitted) never became judicial dogma in economic life any more than in other sectors of human concern.

Lawrence Tribe, *American Constitutional Law*, 2d Edition, 1988, p. 583. *See also* op. cit., page 582 n.16 and citations thereunder.

Equality is not violated, as claimed by Petitioner, by the fact that the Commonwealth requires, as a matter of law, that the persons claiming protection under its laws to reside

within its borders, have offices, and pay taxes, to say the least. As a matter of fact, the states where Petitioner could have filed and litigate its claim, have the same statutory requirements as the Commonwealth of Puerto Rico does.[3] Since the Certification request, and the constitutional attack on the law as the record will show, were not even mentioned by Petitioner in its errors, nor its briefs at the District or the Court of Appeals' level, this questions are not reviewable.

II.

THE FIRST CIRCUIT RULING DOES NOT CONFLICT WITH EITHER PUERTO RICO DEALERS' ACT NOR PUERTO RICO SUPREME COURT PRECEDENT

Petitioner Capen's claims as question C that the First Circuit Court of Appeals "added" a "physical presence requirement" to Act 75 thereby invaded the Commonwealth's Legislative Branch and has the overreaching interpretative consequence of "discriminating" against dealers, such as Capen's, that do not pay taxes to Puerto Rico, have no address, no telephone, no taxes, no p.o.. box, no warehouse, no office and no agents in the Commonwealth.

Petitioner's claims are mistaken. In the case of *Fornaris v. Ridge Tool*, 423 F.2d 563 (1st Cir. 1970), the First Circuit Court of Appeals had an opportunity to examine the law and held that the Act could not validly apply to contracts entered before its

3. Missouri Law only applies to distributors *with a place of business in Missouri.* Mo. Rev. Stat. § 407 .400(1) (1974 and Supp. 1975) (definition of "franchise). Mo. Rev. Stat. §§ 407 .405, 407 .410 (1974 and Supp. 1975). New Jersey has a Franchise Practices Act which *applies only to a franchisee who establishes a "place of business"* in New Jersey, § 56:10-4., and that such a termination only can be based on "good cause". N.J. Rev. Stat. § 56:10-5 (1971).

enactment. As discussed later, this Honorable Supreme Court reversed said decision on abstention grounds. During this first years it was not a happy understanding with the Puerto Rico Dealers Act of 1964. *See* Antonetti, *Puerto Rico Dealers Act Fourteen Years Later*, 83 Com. L. J. 453 1978, and *see* Salomone, *Puerto Rico's Distributors' Law: Law 75, A Primer*, 18 Rev. Jur. 67, (1983).

Respondents must state that at the preliminary injunctions stage of this case the First Circuit (or First panel as designated by the petitioner) held and agreed with the District Court in that petitioner Capen's' dealership status was "a close matter". *A. M. Capen's Co, Inc. v. American Trading and Production Corporation*, 74 F.3d 317, 319 (1st Cir. 1996), petitioner's appendix at page 19. The First Circuit Court (in the injunction's opinion), also noted that:

> [t]his is an appeal from a grant of preliminary injunctive relief. When an appeal comes to us in that posture, the appellant's "conclusions as to the merits of the issues presented on preliminary injunction are to be understood as statements of probable outcomes", rather than as comprising the ultimate law of the case.

App. 28. Finally, the First Circuit's injunction opinion solely sustained that "the law of Puerto Rico most probably applies". App. 28.

Contrary to Capen's representations of what happened after the first panel issued the preliminary injunction's opinion, Respondents affirm that at the "damages' " opinion, 12 F. Supp. 2d 222 (1998), which was appealed and cross appealed, the district court held on footnote number 1 that:

> Later, at the hearing on damages, Plaintiff confirmed that all goods sold in Puerto Rico were sold F.O.B. Continental U.S.A. and further that no taxes whatsoever were paid in Puerto Rico. The matter of dealership, hence, is extremely close since Plaintiff therefore contributes slimly to the Puerto Rican economy raising serious doubts as to legislative intent in the coverage of Plaintiff under the Act.

Ibid. at 223-231.

The First Circuit incursion in Act 75 is not new. It has decided many cases pertaining to Puerto Rico Dealers Act of 1964. The reading of the law and its history, as applied to the facts, AFTER TRIAL, of the instant case is not a prime for the Court of Appeals, and no mistake has been committed. Thirty years have elapsed since the opinion issued by this Supreme Court in the case of *Fornaris v. Ridge Tool Co.*, 400 U.S. 41 (1970). In *Fornaris*, this court reversed on abstention grounds the First Circuit Court's holding that Act 75, precisely the same statute claimed by petitioner to apply on its behalf, was unconstitutional. Three years later, Puerto Rico's Supreme Court in *Warner Lambert v. Tribunal Superior*, 101 P.R.R. 378 (1973) held that Puerto Rico Dealers Act could not be enforced in a contract entered before the law was approved. In *San Juan Mercantile Corp. v. Canadian Transport Co. Ltd.*, 108 P.R.R. 211 (1978), and *Soler Motors, Inc. v. Kaiser Jeep Int'l Corp.*, 108 P.R.R. 134 (1978), Puerto Rico's Supreme Court redefined the "dealer" concept by considering certain duties in order to qualify, as well as clarifying that the introduction of intermediaries in the distribution chain does not impedes the application of Act 75 against the principal manufacturer.

After this rulings, and in accordance with them, federal courts have had the opportunity to interpret and apply the concept of "dealer". *Cruz Ramos v. Brother Int'l Corp.*, 445 F. Supp. 983 (D.P.R. 1978) (distinguishes duties of dealer and sales representative, finding that plaintiff could not maintained an action under Act 75); *Ebi, Inc. v. Gator Industries, Inc.*, 807 F.2d 1 (1st Cir. 1986) (the statute's definition of "dealer" cannot fairly be read to include sales representatives who made no investments in promotion, inventories or facilities, took no risk in credit, collections, shipment and delivery of goods and are paid commissions on orders finally accepted by the principal); *Sudouest Import Sales Corp. v. Union Carbide Corp.*, 569 F. Supp. 1547 (D.P.R. 1983) (performance not within definition of dealer), affirmed in *Sudouest Import Sales Corp. v. Union Carbide Corp.*, 732 F.2d 14 (Cir. 1 1984) (representative did not handle manufacturer's product [shipping, delivery, storage] nor billing and receipts, and whose involvement in sales and promotional activities was limited, is not a "dealer" under Puerto Rico Dealers' Act), *aff'd*, 569 F. Supp. 1547 (D.P.R. 1983); *Representaciones Ebi, Inc. v. Gator Industries, Inc.*, 629 F. Supp. 662 (D.P.R. 1986), *aff'd sub. nom. Ebi, Inc. v. Gator Industries, Inc.*, 807 F.2d 1 (Cir. 1 1986) (no 'dealer/ principal relation under Act 75 found where it did not invest in advertisement or promotional literature, had no inventories or items in stock, and did not assume credit or payment risk); *González v. Brown Group, Inc.*, 628 F. Supp. 436, 440 (D.P.R. 1985) (González was more of a commission salesperson albeit he expanded the market, he assumed no financial risk, no responsibilities for the business once the orders were submitted to the principal's main office, and had no authority to approve or reject sale); *Mario R. Franceschini, Inc. v. Riley Co.*, 591 F. Supp. 414, 420 (D.P.R. 1984) (it is an essential characteristic included in a "dealer"

under Act 75 market development for a product or service through promotion, closing on sales contracts, and acting on its own with full ownership of the goods sold); *Lugo v. Matthew Bender & Co., Inc.*, 579 F. Supp. 638 (D.P.R. 1984), (the test for considering a party a dealer or an employee, is the nature and degree of control or right to direct the worker, whether work performed is within business of the party sought to be charged, investment required, delegation of performance, who furnishes equipment, materials and assistance, degree of initiative and judgment, generation of profit and losses, and independent business with the party to be charged); *Morales v. Gregg Shirt Makers, Inc.*, 682 F. Supp. 142 (D.P.R. 1988) (sales representative for shirt manufacturer is not a "dealer" under Act 75, even though representative increased sales of manufacturer's goods an average of 53% over predecessor, since Morales had no responsibility to deliver goods, collection of money, no credit risk or price setting, maintained no inventory, and took no significant entrepreneurial risk); *Cruz Ramos v. Brother International Corp.*, 445 F. Supp. 983 (D.P.R. 1978) (sales representative who had no obligation to purchase inventory; had no warehousing facilities; employed no salesmen nor had any of the responsibilities of the distribution is not protected by the Act and found only to be a commissioned salesman), *aff'd mem. sub nom.*, 588 F.2d 817 (1st Cir. 1978); and *Triangle Trading Co. v. Robroy Industries, Inc.*, slip op. at 2 (1st Cir., Dec. 29, 1999). *See also* Mario Rodriguez-Vidal, *The conceptual just cause for the Lawful Termination of a Dealership Under the Dealers Contract Law of Puerto Rico*, 58 Rev. — Jur. UPR 261, 264 n.10 (1989).

III.

THIS CASE DOES NOT HAVE FAR-REACHING IMPLICATIONS IN THE FEDERAL JUDICIARY AND THE COMMONWEALTH RELATIONS, IT IS SIMPLY AN OPINION OF STATUTORY CONSTRUCTION

The First Circuit's holding simply made an statutory construction of the Puerto Rico Dealers Act of 1964. It did not create, nor invent its language, its purpose nor its legislative history as Petitioner appears to argue.

This Supreme Court noted and held, in the context of reading federal statutes, that

> [w]riting for the Court in United States v. Turkette, 452 U.S. 576, 593 (1981), Justice White reminded us that the language of the statutes that congress enacts provides "the most reliable evidence of its intent". For that reason, we typically begin the task of statutory construction by focusing on the words that the drafters have chosen. In interpreting the statute at issue, "[w]e consider not only the bare meaning" the critical word or phrase "but also its placement and purpose in the statutory scheme". *Bailey v. United States*, 516 U.S. 137, 145 (1995).

Holloway v. United States, 526 U.S. 1 (1999).

Under the principles of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78, the Commonwealth of Puerto Rico's laws supply the substantive rule of decision in this diversity case. As a matter of comity, the federal courts are bound to accent an

asserted rule of state law where the evidence and jurisprudence is sufficiently conclusive, and the asserted rules are established with sufficient definiteness and finality.

> Except in matters governed by the federal constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State should be declared by its Legislature in an statute or by its highest court in a decision is not a matter of federal concern.

Erie at 78.

Honorable Judge Selya, for First Circuit, has comment on the role of a federal court when adjudicating issues controlled by state law. He stated:

> In its barest essence, borrowing state law demands nothing more than interpreting and applying the rules of substantive law enunciated by the state's highest judicial authority, or, on questions to which that tribunal has not responded, making an informed prophecy of what the court would do in the same situation.[4] See *Moores v. Greenberg*, 834 F.2d 1105, 1112 (Cir. 1, 1987). In the latter

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4. Footnote number 1 to the above cited *Blimzer* First Circuit's Opinion:

> "Indeed, this kind of predictive approach is among our conceptions of law itself. See Oliver Wendell Holmes, **The Path of the Law**, 10 Harv. L. Rev. 457, 461 (1897) ("the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by law".)

> instance, we seek guidance in analogous state court decisions, persuasive adjudication by courts of sister states, learned treatises, and public policy considerations identified in state decisional law. See *Ryan v. Royal Ins. Co.*, 916 F.2d 731, 734-35 (Cir. 1, 1990); *Kathios v. General Motors Corp.*, 862 F.2d 944, 949 (Cir. 1, 1988). As long as these signposts are legible, our task is to ascertain the rule the state court would most likely follow under the circumstances, even if our independent judgment on the questions might differ. See ***Moores***, 834 F.2d at 1107 n.3." *Gloria Blimzer v. Marriot International, Inc.*, 81 F.2d 1148, 1151 (Cir. 1. 1996).

Of course, this Supreme Court in the voice of Honorable Judge Rehnquist has stated in *Weinberger v. Rossi*, 456 U.S. 25, 28 (1981), that:

> Simply because the question presented is entirely one of statutory construction does not mean that the question necessarily admits of an easy answer. Chief Justice Marshall long ago observed that "[w]here the mind labours to discover the design of the legislature, it seizes every thing from which aid can be derived. . . ." *United States v. Fisher*, 2 Cranch 358, 386 (1805). More recently, the Court has stated: -
>
> "Generalities about statutory construction help us little. They are not rules of law but merely axioms of experience. They do not solve the special difficulties in construing a particular statute. The variables render every problem of statutory

> construction unique." *United States v. Universal Corp.*, 344 U.S. 218, 221 (1952) (citations omitted).

This is particularly important when a Puerto Rican statute is in controversy. This Honorable Supreme Court has declared that "[t]he relations of the federal courts to Puerto Rico have often raised delicate problems. It is a Spanish-speaking Commonwealth with a set of laws still impregnated with the Spanish Tradition. Federal Courts, reversing Puerto Rican courts, were inclined to construe Puerto Rican laws in the Anglo-Saxon tradition which often left little room for the overtones of Spanish culture. Out of that experience grew a pronouncement by this Court that a Puerto Rican court should not be overruled on its construction of local law unless it could be said to be "inescapably wrong". *See Bonet v. Texas*, 308 U.S. 463, 471". *Fornaris v. Rigde Tool*, at 42-43.

Following this Supreme Court's normal practice, it should "defer to the construction of a state statute given it by the lower federal courts . . . to reflect our belief that district courts and court of appeal are better schooled and more able to interpret the laws of their respective states. *Brockett v. Spokane Arcodes, Inc.*, 472 U.S. 491, 499-500 (1985)". *Frisey v. Schultz*, 487 U.S. 474, 482 (1988). As a matter of fact and law, it is the practice of this court . . . "to accept a reasonable construction of state law by the court of appeals 'even if an examination of state — law issue without such guidance might have justified a different conclusion'. *Bishop v. Wood*, 426 U.S. 341, 346 (1976)", *cited in Haring v. Prosise*, 462 U.S. 306, 314 n.8 (1983).

The legislative history of Act 75 supports the interpretation of the provision that the First Circuit Court, Judge Torruella Presiding, derived from its language and context. The legislative Committee that submitted reports on the various bills that ultimately became the Puerto Rico Dealer's Act (Act 75) and its subsequent amendments expressly suggested that Act 75 would cover claims **only** from dealers who operate in Puerto Rico under similar requirements as do comparable statutes in New Jersey and Missouri. App. 9.

The Legislative record clearly points out to the purpose of the law to protect dealers *in* and *within* the Commonwealth's borders. The express language of the law when defining dealer clearly provides that the dealer must have in his charge "*in* Puerto Rico" said distribution.

The Commonwealth's Senate Report supportive of the Act's purpose states in part that:

> The problem created in the distribution, system in Puerto Rico has worsened recently by the ill-timed actions of local and foreign manufacturing companies that, without just cause, terminate their relationships with their dealers and agents *in Puerto Rico*, as soon as the latter have created a favorable market for their products, thus frustrating the legitimate exportations and interests of those who so efficiently carried out their responsibilities.[5]

5. Recientemente se ha recrudecido el problema creado en el sistema de distribución en Puerto Rico por la acción intempestiva de empresas manufactureras domésticas y del exterior que, sin causa (Cont'd)

18 Diario de Sesiones, Comisión de Industria y Comercio, May, 14, 1964 page 1531.

The Commonwealth, when enacting Act 75 considered that it could not remain indifferent to the abuses and exploitation of the distributors in Puerto Rico. *See* Statement of Motives. It further states as a justification in support of the law that: ". . . the reasonable stability in the distribution relationships **in** Puerto Rico is vital to **the general economy of the country**, to **public interest**, and, **IN THE EXERCISE OF POLICE POWER**, considers necessary to regulate, in its pertinent part, said relationships to avoid abuses". . . . *See* 18 Diario de Sesiones at 1724. (Translation ours).

On the other hand, Hon. Representative Mr. Iglesias-Silva expressed himself in support of the legislative intent of the then P. C. 1012 when indicating:

> "Mr. President: Go ahead.
>
> Mr. Iglesias-Silva: Mr. President and Brothers of the House: This project words off the discrimination to which agents representatives of import entities in Puerto Rico . . .
>
> . . .

(Cont'd)

justificada, dan por terminadas sus relaciones con sus distribuidores y agentes *en Puerto Rico*, tan pronto como éstos han creado un mercado favorable para sus productos, frustrando las legítimas expectativas e intereses de los que tan eficientemente han cumplido con sus responsabilidades.

In the last months this event has occurred in Puerto Rico, individuals that have represented American entities for fifteen, twenty years, that dedicated all their youth to produce and raise the standard of a given product to abstain higher benefits, without notice or compensations for the years they sacrificed to create the market for said product were ripped off, as it there performance of many years were worthless, and it is casually this Proposal who comes to correct this mistake present in our Island, **AND IT IS NECESSARY AND IMPORTANT FOR US TO PROTECT THOSE PERSONS RESIDING IN PUERTO RICO** who engage in the representation of principals United States' or anywhere on Earth.

On account of this I am in favor of the proposed bill and will vote for its approval.

Mr. President: For the approval of the motion. (The bill was subject to vote and approved).[6] (Emphasis added).

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6. *See also J. Soler Motors v. Kaiser Jeep Int'l*, 108 D.P.R. 134, 140 (1978).

Mr. President: "Sr. Presidente: Adelante.

Sr. Iglesias Silva: Señor Presidente y Compañeros de Cámara: Este proyecto viene a conjurar un discrimen que se ha venido cometiendo hasta ahora con los agentes comisionistas **de casas importadoras en Puerto Rico**.

. . .

(Cont'd)

Subsequent amendments proposed to Act 75 approved in 1966 reaffirmed that the Commonwealth's purpose when enacting said law was that only distributors within the borders of the Commonwealth of Puerto Rico were the subjects to be protected under the Distributor's Act. The Senate's Comisión de Industria y Comercio when *considering P.S. 266, enacted into law* as Act 105 June 23, 1966, at the Diario de Sesiones, page 578, concluded that:

> For the above stated reasons, and considering that the proposed amendments tend to offer Puerto Rican businessman more guarantees, impeding

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(Cont'd)

> En los últimos meses ha sucedido ese fenómeno en Puerto Rico que individuos que representaron casas americanas por espacio de quince, veinte años, que toda su juventud la dedicaron a la producción y a levantar el standard de ese producto para obtener los mayores beneficios, sin avisarle y sin recompensar el número de años que ellos perdieron en el sacrificio para levantar ese producto, se les quitó así como si el trabajo que ellos realizaron durante muchos años no valiera nada, y *es casualmente este Proyecto de Ley quien viene a corregir esa falla* que existe en nuestra Isla, y **es necesario e importante que nosotros protejamos a los individuos residentes en Puerto Rico** que se dedican a representar casas de los Estados Unidos o de cualquier sitio del mundo.
>
> Por tal concepto yo estoy a favor del Proyecto y lo votaré a favor.
>
> Sr. Presidente: A la aprobación de la moción.
>
> (Se somete a votación el Proyecto y es aprobado.)
>
> Sr. Presidente: Aprobado. Adelante."

that Act 75's dispositions be avoided in their reach and original intention, your commission has the honor of proposing the Senate the approval of said measure, without amendments.

Luis Muñoz Rivera
President
Rafael Picó-Secretary[7]

On the other hand, the Comisión de lo Judicial (Judiciary Commission) of the House of Representatives, at page 1522, Diario de Sesiones 1966, sustained that:

The amendments respond to the ill-timed action of domestic and foreign manufacturers who, without just cause, terminate their relationship with their representatives and agents **in Puerto Rico** as soon as the latter have created a favorable local market.[8] (Emphasis added).

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7. "Por las razones anteriormente expuestas, y por considerar que las enmiendas que se proponen tienden a ofrecer mayores garantías *a los comerciantes puertorriqueños*, evitando que las disposiciones de la Ley núm. 75 puedan ser evadidas, en su alcance e intención original. Vuestra Comisión tiene el honor de proponer al Senado la aprobación de dicha medida, sin enmiendas.

Respetuosamente sometido,

Luis Muñoz Rivera,
President
Rafael Picó
Secretario

8. "Las enmiendas corresponden a la necesidad de evitar prácticas indeseables ocurridas durante los últimos años, mediante

(Cont'd)

The proposed amendment covered situations where the distributor instead of being terminated is prejudiced by impairment actions or omissions of the principal.

Act 75's legislative history demonstrate that it was enacted to protect ONLY persons residents of Puerto Rico, doing business in Puerto Rico and thereby paying taxes to the Commonwealth and the municipalities within its borders. Why?, because:

> The dealers Act was enacted by the Puerto Rican Legislature to prevent the economic exploitation **of local dealers**.
>
> "The Legislature had observed that dealers **in Puerto Rico** once they had established a favorable market for a principal's products were particularly vulnerable to summary termination". (Emphasis added) *Draft Line Corp. v. The Hon Co.* 781 F Supp. 841, 843.

As upheld by the Commonwealth's Supreme Court in *San Juan Mercantile, supra*, at 215, "the definition of dealer and dealers' contract in this section are too schematic and require delimitation in light of the purpose of the law".

(Cont'd)

las cuales empresas domésticas y del exterior obligan indirectamente a los distribuidores, concesionarios o agentes *en Puerto Rico* a abandonar la relación contractual una vez que han creado el mercado local favorable."(Emphasis Added)."

Puerto Rico's United States District Judge Fusté in *Draft Line, supra*, stated in footnote 7 that

> Medina & Medina (88 JTS 6162) could be read as opening Law 75 up to a more liberal in one which treats the economic interests of both parties equally in all situations. But that would be **contrary to the history of the law as an instrument for the protection of local dealers**.

(Emphasis added).

Thereby, considering the *plain language* of the law, its *legislative record, and the statute as a whole*, it is evident why the First Circuit Court of Appeals held that the sole purpose of Act 75 was no other than to protect dealers *in* Puerto Rico, with place of business within the Commonwealth not non resident merchants such as Petitioner.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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